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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

vs.

UBER TECHNOLOGIES, INC.;
OTTOMOTTO LLC; OTTO TRUCKING
LLC,

Defendants.

CASE NO. 3:17-cv-00939-WHA

**DECLARATION OF JONATHAN
FRANCIS IN SUPPORT OF PLAINTIFF
WAYMO LLC'S MOTION FOR
RECONSIDERATION OF ORDER ON
COMPREHENSIVE MOTION TO FILE
UNDER SEAL (DKT. 2685)**

1 I, Jonathan Francis, declare as follows:

2 1. I am an attorney licensed to practice in the State of California and am admitted to
3 practice before this Court. I am an associate at the law firm Quinn Emanuel Urquhart & Sullivan,
4 LLP, counsel for the Plaintiff Waymo LLC (“Waymo”). I have personal knowledge of the matters set
5 forth in this Declaration, and if called as a witness I would testify competently to those matters.

6 2. I make this declaration in support of Plaintiff Waymo LLC’s Motion for
7 Reconsideration of Order on Comprehensive Administrative Motions to File Under Seal (Dkt. 2685)
8 (“Motion for Reconsideration”). The Motion for Reconsideration seeks an order sealing limited
9 portions of exhibits for which the Court denied sealing.

10 3. The portions of the deposition transcript of Gregory Kintz, dated April 26, 2017
11 (previously filed as Dkt. 409-8), marked with green highlights in the version filed concurrently
12 herewith as Exhibit A, contain, reference, and/or describe Waymo’s asserted LiDAR trade secrets,
13 specifically at least Alleged Trade Secret 1, or information that, from context, tends to disclose at least
14 Alleged Trade Secret 1.

15 4. The portions of the transcript of the Rule 30(b)(6) deposition transcript of Pierre Yves-
16 Droz, dated August 3, 2017 (previously filed as Dkt. 1299-5) filed concurrently herewith as Exhibit B,
17 contain, reference, and/or describe Waymo’s asserted LiDAR trade secrets, specifically Alleged Trade
18 Secret 9, or information that, from context, tends to disclose Alleged Trade Secret 9.

19 5. The portions of an email sent by Drew Bagnell, dated March 19, 2016 (previously filed
20 as Dkt. 1159-14 & as Dkt. 2606-12), specifically the portions marked with green highlights in the
21 versions filed concurrently herewith as Exhibit D and Exhibit J, contain, reference, and/or describe
22 Waymo’s asserted LiDAR trade secrets. More specifically, the portions marked describes one of the
23 specific self-drive test scenarios that comprise Alleged Trade Secret 25, which Waymo alleged was
24 misappropriated by Uber in this litigation.

25 6. The portions of an email sent by Anthony Levandowski, dated April 30, 2016
26 (previously filed as Dkt. 1341-12 & as Dkt. 1526-23), specifically the portions marked with green
27 highlights in the versions filed concurrently herewith as Exhibit E and Exhibit F, contain, reference,
28 and/or describe Waymo’s asserted LiDAR trade secrets. More specifically, the portions marked

1 describe technical specifications of Waymo's FAC lens, which was Alleged Trade Secret No. 9 in this
2 litigation. This information describes Waymo's trade secret, and discloses confidential manufacturing
3 information, that from context would disclose Alleged Trade Secret 9.

4 7. I understand that the trade secrets referenced in ¶¶ 3–6 are maintained as secret by
5 Waymo (Dkt. 25-47) and that each individual trade secrets is valuable to Waymo's business (Dkt. 25-
6 31), as reflected by the value of the settlement in this case. The public disclosure of this information
7 would destroy Waymo's trade secrets and give Waymo's competitors the ability to short-circuit the
8 normal development process by availing themselves of the fruits of Waymo's research and
9 development efforts while avoiding the significant time and expense of undertaking their own research
10 and development. Accordingly, if such information were made public, Waymo's competitive standing
11 would be significantly harmed. Such information remained sealed during the pendency of this case,
12 including at trial, where it was only discussed (if at all) in sealed sessions. Sealing of this type of
13 trade secret information is thus justified under either the "good cause" or "compelling reasons"
14 standard, and this Court has previously granted sealing of this type of information.

15 8. The portions of the Bratic Rebuttal Expert Report (previously filed at Dkt. 2275-4)
16 contain, or describe Waymo's confidential financial information and business plans. Specifically,
17 those portions marked with green highlights at ¶¶ 35, 48, 55, 108, 119, 211, 213, & 221 in the version
18 filed concurrently herewith as Exhibit G, disclose confidential and internal financial and business
19 development information, including detailed information regarding the internal assessments for the
20 growth of Waymo's self-driving technology and market. I understand that public disclosure of such
21 detailed business strategy information would enable competitors to unfairly tailor their own business
22 strategy based on Waymo's confidential business strategy and plans, which would cause Waymo
23 significant competitive harm.

24 9. The portions of an email from Brian Salesky, dated January 31, 2015 (previously filed as
25 Dkt. 1336-11/1396-10) and filed concurrently herewith as Exhibit I, disclose Waymo's internal
26 business development dealings, as well as confidential discussions with third parties. I understand that
27 the disclosure of this information would cause significant harm to Waymo's ability to engage in these
28 types of business discussions in the future. In addition, I understand that the portions identified

1 disclose current business and financial considerations that Waymo continues to evaluate in the present
 2 and for the foreseeable future. The disclosure of this information, even that which was first written in
 3 2015, thus would still cause Waymo substantial competitive harm today, should it be made public.

4 10. The portions of Defendants' Response to Waymo's Précis regarding Defendants'
 5 Litigation Misconduct (previously filed as Dkt. 2477-4), specifically the portions marked by the red
 6 box at 3:26–27, in the version filed concurrently herewith as Exhibit C, describes or discloses
 7 confidential legal advice given by Google counsel to Google employees. This legal advice describes
 8 the company's internal policy positions and assessment of ongoing litigation and legal regulatory
 9 matters. I understand that Google has maintained this advice as privileged and that the Court has
 10 granted sealing of the same information previously in this case. *E.g.*, Dkt. 2685 at 45 (granting sealing
 11 of Dkt. 2477-6).

12 11. The portions of Plaintiff's Response to Discovery Order (previously filed as Dkt. 2467-
 13 2), specifically marked with green highlights at 4:6-7 in the version filed concurrently herewith as
 14 Exhibit H describe the particulars of Google and/or Waymo's litigation hold policy in this and other
 15 matters. I understand that this policy constitutes confidential and privileged legal advice and is
 16 maintained as privileged in this litigation and others. I also understand that Waymo only disclosed this
 17 information to the Court and in this litigation in response to an order issued pursuant to Fed. Rule.
 18 Evid. 502, stating that such disclosure would not operate as a waiver of any asserted privileges.

19 12. Waymo's current requests to seal are narrowly tailored only to seal that information
 20 which merits sealing with respect to Exhibits A-J.

21
 22 I declare under penalty of perjury under the laws of the State of California and the United
 23 States of America that the foregoing is true and correct, and that this declaration was executed in San
 24 Francisco, California, on January 28, 2019.

25 By /s/ Jonathan S.M. Francis

26 Jonathan S.M. Francis
 27 Attorneys for WAYMO LLC
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